

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RICHARD J. HELLER,

Plaintiff,

-v.-

3: 05-CV-1581
(TJM)(DEP)

CONSOLIDATED RAIL CORPORATION; UNITED
TRANSPORTATION UNION; CSX TRANSPORTATION;
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION;
and NORFOLK SOUTHERN CORPORATION,

Defendants.

APPEARANCES:

RICHARD J. HELLER
Plaintiff, *pro se*

THOMAS J. MCAVOY, Senior United States District Judge

DECISION and ORDER

The Clerk has sent to the Court for review a *pro se* complaint submitted for filing by plaintiff Richard J. Heller. Dkt. No. 1. Plaintiff indicates that the complaint is filed pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended and codified at 42 U.S.C. § 2000e *et seq.*; the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, as amended; and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.* Dkt. No. 1. Plaintiff has also submitted an *in forma pauperis* application. Dkt. No. 2.

In his *pro se* complaint, plaintiff alleges, *inter alia*, that after being injured in the course of employment, he was denied the opportunity to return to his job and denied reasonable accommodation for his disability. Plaintiff also claims that the United Transportation Union failed to protect plaintiff's rights and in fact conspired with the other defendants to deny plaintiff employment and benefits to which plaintiff was entitled. Dkt. No. 1 at 7-14. For a more complete

statement of plaintiff's claims, reference is made to the entire complaint. Plaintiff has provided the Court with a copy of the right to sue letter issued by the Equal Employment Opportunity Commission ("EEOC") regarding the above allegations of discrimination. Dkt. No. 1, Exhibit 1. Plaintiff alleges that he received the right to sue letter on September 21, 2005. Dkt. No. 1 at 1.

Plaintiff has named the EEOC as a defendant. Plaintiff does not allege that he was employed by the EEOC; plaintiff merely claims that the EEOC conspired with the other defendants to deprive plaintiff of his statutory rights. Dkt. No. 1 at 11. Plaintiff's claim for monetary damages against the EEOC is barred by sovereign immunity. *See Clissuras v. Equal Employment Opportunity Commission*, No. 89 CIV. 5869, 1990 WL 96754, at *4 (S.D.N.Y. Jul. 5, 1990) (claims for money damages against the EEOC are barred by sovereign immunity); *see also Stone v. NYC Transit*, No. 04-CV-4141, 2005 WL 1593524, at *1 (S.D.N.Y. Jul. 7, 2005) (in employment discrimination cases, sovereign immunity of the United States and its agencies is only waived if the United States or the agency is the employer or prospective employer). Accordingly, the U.S. Equal Employment Opportunity Commission is dismissed as a defendant.

Turning to plaintiff's *in forma pauperis* application (Dkt. No. 2), the Court finds that the plaintiff may proceed with this matter *in forma pauperis*.

WHEREFORE, it is hereby

ORDERED, that the U.S. Equal Employment Opportunity Commission is **dismissed** as a defendant to this action, and it is further

ORDERED, that plaintiff's *in forma pauperis* application (Dkt. No. 2) is **GRANTED**.¹ The

¹ The Court notes that although Plaintiff's Application to Proceed *In Forma Pauperis* has been granted, Plaintiff will still be required to pay fees that he may incur in the future regarding this action, including but not limited to copying and/or witness fees.

Clerk shall issue summonses and forward them, along with copies of the complaint and packets containing General Order 25, which sets forth the Civil Case Management Plan used by the Northern District of New York, to the United States Marshal for service upon the named defendants, and it is further

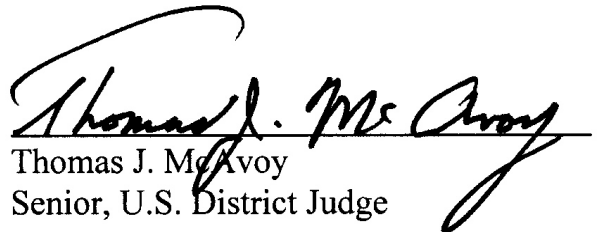
ORDERED, that the Clerk is directed to schedule a Rule 16 conference before the assigned magistrate judge, and it is further

ORDERED, that a formal response to plaintiff's complaint be filed by the defendants or their counsel as provided for in the Federal Rules of Civil Procedure subsequent to service of process on the defendants, and it is further

ORDERED, that any paper sent by a party to the Court or the Clerk shall be accompanied by a certificate setting forth the date a true and correct copy of it was mailed to all opposing parties or their counsel. Any letter or other document received by the Clerk or the Court which does not include a certificate of service which clearly states that an identical copy was served upon all opposing parties or their attorneys is to be returned, without processing, by the Clerk, to the party that sent it. Plaintiff shall also comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All motions shall comply with the Local Rules of Practice of the Northern District, and it is further

ORDERED, that the Clerk serve a copy of this Order on the plaintiff by regular mail.

Dated: March 16, 2006


Thomas J. McAvoy
Senior, U.S. District Judge